

GENERAL GOVERNMENT CABINET
Personnel Cabinet
(Amendment)

101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS Chapter 13B, 18A.075, 18A.0751, 18A.095, 344.030

STATUTORY AUTHORITY: KRS 13B.170, 18A.075, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations to carry out the provisions of KRS Chapter 13B and enact administrative hearing procedures. KRS 18A.075 provides that the Personnel Board shall promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 provides that the Personnel Board shall promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation establishes Personnel Board hearing procedures.

Section 1. Definitions. (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).

(2) "Qualified individual with a disability" is defined by KRS 344.030(1).

(3) "Reasonable accommodation" is defined by KRS 344.030(6).

(4) "Religion" is defined by KRS 344.030(7).

(5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

Section 3. Filing. (1) An appeal or a document relating to an appeal shall be filed with the Personnel Board through the office of the executive director within the time period set forth in KRS 18A.095 ~~[after receiving notification of the penalization or after becoming aware of the penalization through the exercise of due diligence]~~.

(2)(a) An appeal, motion, request, objection, exception, response, witness list or other document may be filed by a party with the board by means of facsimile transmission or other electronic means including email.

(b) If a party transmits a document to the board by facsimile transmission or other electronic means, they [he] shall attempt to transmit the document to all parties by the same method ~~[facsimile transmission]~~.

(3) To be timely filed, a document transmitted by facsimile or other electronic means shall be received by the board within the statutory or regulatory times specified for filing and be received by the board no later than midnight on the last day for filing.

(4) The submission of an original copy of a facsimile transmission or email shall not be required, unless upon request.

~~(5) [be received by the Personnel Board no later than three (3) business days after transmission or the document transmitted shall be voided unless good cause is shown.]~~

~~(5) The date of filing of a document filed by facsimile transmission shall be the date the original of the document was received by the board, if the board fails to receive the facsimile transmission.~~

~~(6)~~] A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal without the advance written permission of an appointing authority in their employing agency.

~~(6)~~~~(7)~~] An appeal shall be heard in Franklin County~~[Frankfort]~~, Kentucky.

Section 4. Designation of Hearing Officer. (1) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to an appeal.

(2) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief hearing officer.

(3) If an appeal will be heard by the full board, ~~[the chairman of]~~ the board shall designate a ~~[serve as the]~~ chief hearing officer.

Section 5. Continuances. (1) A continuance of a scheduled hearing may be granted by a hearing officer for good cause.

(2) The hearing officer has the discretion to require that a request for continuance must ~~[A request for a continuance shall]:~~

(a) Be written;

(b) State the reason for the request;

(c) Include proposed dates for rescheduling the hearing; and

(d) Be filed with the board.; ~~[and~~

~~(e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.]~~

(3) The hearing officer has the discretion to require that any objection to a request for continuance must ~~[An objection to a request for a continuance shall]:~~

(a) Be written;

(b) State the reason for the objection to the request for continuance; and

(c) Be filed with the board.; ~~and~~

~~(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.]~~

(4)(a) At the direction of the hearing officer, the executive director may ~~[shall]~~ execute and transmit to all parties an interim order either granting or denying the request for continuance.

(b) If the request for continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 6. Prehearing Procedures. (1) A motion, request, or filing shall be in writing, filed with the board through the office of the executive director, and served on all parties.

(2) Unless an interim order provides for review by the board prior to the conclusion of a hearing, which shall only be granted at the sole discretion of the hearing officer, the board shall review an interim order when it considers the recommended order, record, and exceptions.

(3) If an employee retains counsel subsequent to filing an ~~[his]~~ appeal, their ~~[his]~~ attorney may be required to ~~[shall]~~ file a written entry of appearance.

(4) An employee shall notify all parties and the board in writing of a change of address.

(5)(a) A Kentucky Personnel Board subpoena form shall be available in the office of the executive director and shall be issued by the executive director.

(b) Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(6) A deposition may be taken in an extraordinary circumstance and upon authorization by the hearing officer. A request to take a deposition shall be filed at least fifteen (15) calendar days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.

(7) At the discretion of the ~~[Upon agreement of all parties and approval by the]~~ hearing officer, two (2) or more appeals that [which] involve the same or similar facts may be consolidated. Upon motion of a party, or upon their [his] own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

(8) An agreed settlement shall be submitted in writing for review by the Personnel Cabinet Secretary and final action by the board.

Section 7. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.

(2) A party shall provide at least four (4) copies of an exhibit that is to be introduced as evidence. The parties may exchange documents through appropriate electronic means, including email. The hearing officer shall have the discretion to appropriately fashion the evidentiary record at all times. ~~[Copies shall be prepared prior to the hearing.]~~

Section 8. Board Review and Action. (1) A response to a written exception to a recommended order may be filed by a party within fifteen (15) ~~[five (5)]~~ calendar days after the date the written exception is filed with the board. A response shall be:

(a) In writing; and

(b) Served on all parties.

(2) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:

(a) In writing; and

(b) Filed with the board within fifteen (15) days of issuance of a recommended order.

(3) A final order shall be prepared, executed, and entered at the direction of the board by the secretary to the board.

Section 9. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Kentucky Personnel Board Appeal Form (1-~~[A]~~2018)"; and

(b) "Kentucky Personnel Board Subpoena Form (2-~~[A]~~90)".

(2) These forms may be inspected, copied, or obtained at the office of the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the Personnel Board appeal and hearing procedures.

(b) The necessity of this administrative regulation: This regulation is necessary in order to set procedures and guidelines for the Board to process appeals and conduct hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A. 075, 18A.0751 and KRS 13B.170 provides that the Board promulgate this regulation adopting procedures to be used when conducting hearings and processing appeals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to establish appeal and hearing procedures.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies time and method requirements for filing an appeal and updates the location where an appeal shall be heard. A state employee may use state time, equipment, materials, or personnel in pursuing an appeal if the employee receives advance written permission from the appointing authority. Also, clarifies that the Hearing Officer is granted sole discretion in determining whether an interim order provides for review by the Board prior to the conclusion of a hearing.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the procedures for the appeal process and hearing procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies the procedures for conducting hearings and conforms with KRS 13B.170, 18A.075, 18A.0751, that authorize the board to do so.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistently required for effective administration of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies and state employees who choose to file an appeal.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will not be any new actions required of the entities identified in question (3) to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continued compliance of this regulation will provide uniformity to the appeal process and hearing procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or a necessity in funding to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended assures hearings are held equally and appeals processed uniformly.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state government agencies and state employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, KRS 18A.0751, 18A.005 to 18A.200, and KRS 13B.170.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There are no estimated costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.